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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,567	07/29/2003	John F. Swigart	005127.00121	4866
22909	7590	07/14/2005	EXAMINER	
BANNER & WITCOFF, LTD. 1001 G STREET, N.W. WASHINGTON, DC 20001-4597			PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 07/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/628,567	SWIGART ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Marie Patterson	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 June 2005.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 54-101 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 54-101 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 54, 55, 57, 58, 64-67, 69-73, 77, 79, 80, 88, 92, and 94-101 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Huang (5335382).

Huang shows a fluid system for footwear formed from polymer sheets which are bonded together (see column 2 lines 25-30, 46, and column 4 lines 5-20) to form a pump chamber (10), conduits with valves (as shown in figure 10), a pressure chamber (U-shaped rear portion shown in figures 10-10C), and the pressure chamber being located around the pump chamber (as shown in figure 10C) as claimed.

3. Claims 54-56 and 64 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Dean (5704137).

4. Claims 54, 55, 58, 59, 64, 65, 71-73, 77, 78, 88, 93, and 96-101 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Swigart (2002/0053146).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 59 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang in view of Pavone (6192606).

Huang shows a fluid system substantially as claimed except for the exact valve. Pavone teaches the use of any available valve for use in footwear fluid systems (column 3 lines 25-30). A valve formed by a polymer layer with an inlet biased open by a weld bead is considered to be a known available valve (some are known as duck bill valves). It would have been obvious to use any known valve as taught by Pavone in the fluid system of Huang to provide a lightweight, durable, inexpensive system.

7. Claims 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang in view of Niculae (French 2670369) .

Huang shows a shoe with a fluid system therein substantially as claimed except for a filter at the inlet valve. Niculae teaches providing a filter (1) at an inlet of a fluid system. It would have been obvious to provide a filter as taught by Niculae in the inlet of the fluid system of Huang to preserve the integrity of the system.

8. Claims 54, 55, 57-58, 64-73, 77-82, 85-88, and 92-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swigart (2002/0053146) in view of Biotteau (French 2614510).

Swigart shows a shoe with a fluid system comprising first and second sheets bonded (see paragraphs 0025 and 0026) to form a pump chamber (16) and pressure chamber (12 and 14), with fluid paths (27 and or 20 and 30) with valves located therein (see figures 2A and 3A) substantially as claimed except for providing an inlet which connects the pump chamber to ambient air. Biotteau teaches providing an inlet (5) connecting a

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central pumping chamber (3) to ambient air as well as the pumping chamber fluidly connected to pressure chambers (8a-8c) through fluid paths with valves (9). It would have been obvious to provide an inlet as taught by Biotteau in the system and shoe of Swigart to provide greater adjustability of the support of the fluid system to better customize the support.

In reference to claim 57, 69, 79, and 94 Biotteau teaches forming the top of the pump chamber above the pressure chambers (see figures 1). It would have been obvious to form the top of the pump chamber above the pressure chambers in the fluid system of Swigart to facilitate pumping.

9. Claims 74-76, 83, 84, and 89-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 54, 55, 57-58, 64-73, 77-82, 85-88, and 92-101 above, and further in view of Niculae (French 2670369).

Swigart as modified above shows a shoe with a fluid system therein substantially as claimed except for a filter at the inlet valve. Niculae teaches providing a filter (1) at an inlet of a fluid system. It would have been obvious to provide a filter as taught by Niculae in the inlet of the fluid system of Swigart as modified above to preserve the integrity of the system.

#### ***Response to Arguments***

10. Applicant's arguments with respect to claims 54-101 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (572)272-8300 (**FORMAL FAXES ONLY**). Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.



Marie Patterson  
Primary Examiner  
Art Unit 3728